

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY OF STERLING HEIGHTS
GENERAL EMPLOYEES'
RETIREMENT SYSTEM, Individually and
on Behalf of All Others Similarly Situated,

No. C 14-80161 WHA

Plaintiffs,

v.

**ORDER GRANTING
MOTION TO QUASH**

PRUDENTIAL FINANCIAL, INC., *et al.*,

Defendants.

INTRODUCTION

In this miscellaneous action, a non-party in the underlying action moves to quash subpoenas for the production of documents and a deposition witness. For the reasons stated below, the motion is **GRANTED**.

STATEMENT

A putative class action alleging violations of federal securities laws is currently pending before the United States District Court for the District of New Jersey. *City of Sterling Heights General Employees' Retirement System v. Prudential Financial, Inc.*, No. 12-cv-05275 (D.N.J.). According to plaintiffs (Opp. 2):

In short, the complaint [in the underlying action] alleges that [defendant] Prudential, over decades, knowingly ignored policyholder deaths to avoid paying beneficiaries and escheating unclaimed property to the states and thereby materially misrepresented its financial condition, understating its reserves and overstating its earnings per share.

1 The action follows a 2011 multi-state “market conduct examination,” which sought to
2 investigate whether Prudential was in violation of state claims settlement laws (O’Connell Decl.
3 ¶ 2). The “basis for the violation” was that “insurers were using the United States Social
4 Security Administration Death Master File (SSA-DMF) to determine when annuitants were
5 deceased and terminating benefits” but were not “symmetrically using the SSA-DMF to
6 determine when life insurance policyholders had died and seeking to settle life insurance claims
7 with the deceased policyholders’ beneficiaries” (O’Connell Decl. ¶ 4). The multi-state
8 examination was organized by the National Association of Insurance Commissioners, which is
9 “the U.S. standard-setting and regulatory support organization created and governed by the chief
10 insurance regulators” of the various states (O’Connell Decl. ¶ 6; Noonan Decl. ¶ 2).
11 Pennsylvania was designated as the “managing lead state” in the multi-state examination, and
12 was joined by California, Florida, Illinois, New Hampshire, and North Dakota (O’Connell Decl.
13 ¶ 6).

14 As part of the examination, Prudential produced numerous documents to the examiners
15 (O’Connell Decl. ¶ 7). Eventually, Prudential offered to enter into a settlement, which became
16 effective on April 15, 2012 (O’Connell Decl. ¶ 9). Over fifty states and territories within the
17 United States have joined the settlement, including California.

18 On April 3, 2014, plaintiffs served non-party California Department of Insurance
19 (“Department”) with a document subpoena, seeking discovery related to the multi-state
20 examination (Lew Decl., Exh. B at 12). On May 6, 2014, plaintiffs served the Department with a
21 deposition subpoena, seeking testimony by a knowledgeable person on the same matters (Lew
22 Decl., Exh. D). In its motion to quash, the Department claims that plaintiffs are seeking the
23 same documents and information from Prudential itself (Br. 15). In their opposition, plaintiffs
24 notably ignore this argument (Opp. 15–16). In addition, plaintiffs are currently pursuing the
25 same documents and information from the Pennsylvania Insurance Department, the Florida
26 Office of Insurance Regulation, and the California Controller (Lew Decl., Exhs. E, F, G, H, I, J
27 & K). Plaintiffs have indicated that they may seek the same discovery from the Illinois
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1 Department of Insurance, the New Hampshire Department of Insurance, the North Dakota
2 Insurance Department, and dozens of other state agencies (Lew Decl., Exh. L).

3 The Department now moves to quash the subpoenas, claiming in part that plaintiffs'
4 discovery demands are unreasonably duplicative and overly burdensome. This order follows full
5 briefing and oral argument.

6 ANALYSIS

7 Under FRCP 26(b)(2)(C)(i), a court may limit discovery if “the discovery sought is
8 unreasonably cumulative or duplicative, or can be obtained from some other source that is more
9 convenient, less burdensome, or less expensive.” Such is the case here. The Department claims
10 that *all* of the relevant documents and information it currently possesses were provided by
11 Pennsylvania “in its role as managing lead state” (Br. 15; Reply Br. 12). Pennsylvania obtained
12 the documents from Prudential. Accordingly, the Department argues that plaintiffs can obtain all
13 of the documents and information at issue directly from Prudential or Pennsylvania. In their
14 opposition, plaintiffs do not state whether they have received any relevant discovery from
15 Prudential so far. As counsel for plaintiffs admitted at the motion hearing, the only evidence in
16 the current record regarding plaintiffs’ attempt to get discovery from Prudential is a single
17 sentence in a declaration, stating, “[d]iscovery ensued thereafter” (Williams Decl. ¶ 4). This is
18 insufficient. Moreover, plaintiffs do not identify in their opposition any documents or
19 information that cannot be acquired directly from Prudential or any of the other individual
20 defendants in the underlying action. Plaintiffs’ fishing expedition of seeking duplicative
21 documents and information from various state agencies across the country is not justified by the
22 present record and is overly burdensome to the Department. Accordingly, the motion to quash is
23 **GRANTED**. It is unnecessary to reach the further issues concerning confidentiality and privilege
24 raised by the Department at this time.

25 CONCLUSION

26 For the reasons stated above, the motion to quash is **GRANTED**. If Judge Wigenton finds
27 in the underlying action that plaintiffs are entitled to evidence but Prudential no longer has the
28 evidence or stonewalls production of the evidence, then the Court may consider enforcing a fresh

1 subpoena (but will also then consider the Department's further concern about confidentiality).
2 The Department should ensure that it keeps and maintains all documents relevant to the
3 underlying action.

4 This case is over. The Clerk **SHALL CLOSE THE FILE**.

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6 **IT IS SO ORDERED.**

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8 Dated: June 19, 2014.


9 WILLIAM ALSUP
10 UNITED STATES DISTRICT JUDGE
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